

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$67,123.74 for date of service 02/07/01.
- b. The request was received on 02/07/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC-60a/b and Letter Requesting Dispute Resolution dated 04/11/02
 - b. UB-92
 - c. EOB(s)
 - d. EOB(s) from other carriers
 - e. Medical records
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC-60a/b and an undated response to the Request for Dispute Resolution and a letter dated 05/02/02
 - b. UB 92
 - c. EOB(s)
 - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/18/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 04/19/02. The response from the insurance carrier was received in the Division on 05/02/02. Based on 133.307 (i) the insurance carrier's response is timely.

III. PARTIES' POSITIONS

1. Requestor: The requestor states in the correspondence dated 04/11/02, "The date of service involved in this dispute was from February 7, 2001 for treatment regarding the above-referenced claimant's work-related injury. The Carrier denied payment with payment exception code 'M' for all items provided in the UB-92, which were Fee Codes with a 'MAR' and treatment codes without a 'MAR'."

2. Respondent: The respondent representative states in correspondence dated 05/02/02, “Carrier has determined that \$1118.00 represents fair and reasonable reimbursement for this service....Carrie calculated the reimbursement based upon the inpatient hospital fee guides for surgical care...Carrier has issued payment based upon one day of inpatient treatment at the daily rate of \$1118.00. This reflects the amount the provider would have received if the procedure were performed in an inpatient hospital setting.”
WERE APPLIED TO THIS SERVICE.”

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1&2), the only date of service eligible for review is 02/07/01.
2. The provider billed a total of \$7,296.74 on the date of service in dispute.
3. The carrier reimbursed a total of \$1,118.00 and it’s EOB has the denial “M – IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE.”
4. The amount in dispute per the TWCC-60 is \$6,123.74.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011(b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The provider submitted reimbursement data to document what they consider inconsistent application by the carrier of the carrier’s own methodology. The provider has submitted EOB(s) from this carrier. These indicate that the carrier paid 22% (low) to 97% (high) of the billed charges. The billed amounts shown on these EOB(s) range from a \$2,316.00 (low) to \$9,974.86 (high). These EOB(s) do not indicate the procedure performed. The provider also included EOB(s) from a variety of other carriers showing reimbursements of 36% (low) to 99% (high) of the billed charges ranging from the lowest amount of \$3,958.42 to the highest amount of \$8,188.84. In addition, the provider has submitted a reimbursement log of other EOB(s). This list shows the date of service, the amount billed, amount reimbursed, percentage of the billed amount reimbursed, and the payer of the bill. The list shows a wide range in the amount billed and in the amount of reimbursement received as a percentage. The list contains no references to the treatments/services performed.

The Carrier submitted reimbursement data to comply with Commission Rule 133.304 (i)(1-4). Although the entire methodology may not necessarily be concurred with by the Medical Review Division, the requirements of the Rule have been met. The carrier's position is that the bill has been paid at a fair and reasonable rate of \$1,118.00. The carrier calculated the reimbursement based upon the inpatient hospital fee guides for surgical care. One day of inpatient treatment care rate is \$1,118.00. The carrier asserts that by definition, ambulatory surgery is appropriate in medical situations requiring treatment that is less intensive than inpatient surgery. The carrier states, "It is therefore instuctive to compare the reimbursement of inpatient surgery with the billings in the immediate case. The Commission has set per diem rates for inpatient treatment of \$1118.00 per day for surgical treatment...." Per the carrier's methodology, outpatient or ambulatory surgical services are those that require less than 90 minutes anesthesia time and less than four hours of recovery. By providing ambulatory services the patient receives care from the facility for ¼th of the time of being in an inpatient setting for a full day and the facility is paid at the equivalent of a one day inpatient stay.

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine what would be fair and reasonable reimbursement. Both parties to the dispute have submitted documentation in support of their position. Regardless of the carrier's application of it's methodology, the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight should be given to EOB(s) for documenting fair and reasonable reimbursement. The carrier's documentation is more persuasive and meets the requirement of Sec. 413.011(b) of the Texas Labor Code, "to achieve effective medical cost control." Therefore, no additional reimbursement is recommended.

The above Findings and Decision are hereby issued this 27th day of June, 2002.

Donna M. Myers, B.S.
Medical Dispute Resolution Officer
Medical Review Division

DMM/dmm

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.